IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Murder Reference No.12 of 2005

Date of decision : December 22, 2006.

State of Punjab

.... Appellant

versus

Des Raj

.... Respondent

Crl. Appeal No. 10-DB of 2006

Des Raj

.... Appellant

versus

State of Punjab

.... Respondent

Crl. Appeal No.670-DBA of 2006

State of Punjab

.... Appellant

versus

Jaswant Kaur and others

.... Respondents.

Crl. Revision No. 1835 of 2006

Chand Singh

.... Petitioner

versus

State of Punjab & others

.... Respondents.

CORAM : HON'BLE MR.JUSTICE VIRENDER SINGH .
HON'BLE MR.JUSTICE A.N.JINDAL.

Present : Mr. R.S. Ghai, Sr. Advocate with
Mr. Vinod Ghai, Advocate
for the appellant and accused-respondents.

Mr. M.S. Sidhu, Sr. DAG, Punjab

Mr. R.S. Rai, Advocate with
Mr. N.S. Dhaliwal, Advocate
for the complainant.

A.N. Jindal, J.

This judgment disposes of a murder reference No.12 of 2005 filed by State of Punjab, Criminal Appeal No.670-DBA of 2006 filed by State of Punjab, Criminal Appeal No.10-DB of 2006 filed by Des Raj accused-appellant (hereinafter referred to as 'the accused') and Criminal Revision No.1835 of 2006 filed by Chand Singh-complainant, in respect of the judgment dated 7.12.2005 passed by the learned Sessions Judge, Sangrur, vide which the following reliefs have been sought :-

1) ***Murder Reference No.12 of 2005, State of Punjab vs. Des Raj,*** vide which State of Punjab has sought confirmation of the death sentence awarded to Des Raj accused vide judgment dated 7.12.2005 passed by the learned Sessions Judge, Sangrur.
2) ***Criminal Appeal No.10-DB of 2006, Des Raj vs. State of Punjab.*** The accused-appellant Des Raj has sought the reversal of the impugned judgment and his acquittal in the case.
3) ***Criminal Appeal No.670-DBA of 2006, State of Punjab vs. Jaswant Kaur & others.*** State of Punjab has challenged the impugned judgment dated 7.12.2005 passed by the learned Sessions Judge, Sangrur, whereby the trial Court while convicting and sentencing the accused-appellant Des Raj, had acquitted the accused-respondents Jaswant Kaur, Pavitar Singh, Harminder Singh @ Happy, Pargat Singh @ Rajinder Singh, Baljinder Kaur and Harjit Kaur (hereinafter referred to as 'the respondents'). A prayer has been made to set aside the order of acquittal and convict all the accused-respondents (hereafter referred to as 'the accused').

4) ***Criminal Revision No.1835 of 2006, Chand Singh vs. State of Punjab and others,*** whereby the complainant has prayed for setting aside the order of acquittal and convicting the accused under Section 302 IPC. A further prayer has been made for awarding adequate compensation to the family of the deceased.

A persistent quarrel between the neighbours over the throwing of garbage in front of the house of the complainant turned the brain of the retired police official (Constable) who having been provoked due to the quarrel of the ladies, with a motive to end the feud for ever opened the attack, killing three persons and causing injuries to other four, on the evening of 16.2.2003 at village Qilla Rehmatgarh. As a sequel of which Des Raj accused-appellant (hereinafter referred to as 'the accused') and six others namely Jaswant Kaur wife of Des Raj, Pavitar Singh, Harminder Singh alias Happy and Pargat Singh alias Rajinder Singh all sons of Des Raj, Baljinder Kaur wife of Harminder Singh and Harjit Kaur wife of Pargat Singh, were sent up for trial by the S.H.O. Police Station Malerkotla. On conclusion of the trial, all the accused except accused Des Raj were acquitted of the charges framed against them, whereas Des Raj accused was convicted under Section 302 IPC and was sentenced to death with the directions that he be hanged by the neck till he is dead.

The occurrence giving rise to the trial culminating into conviction and death sentence to the accused Des Raj, from where the present appeals as well as reference came up before us for disposal, took place at village Qila Rehmatgarh, Tehsil Malerkotla, on 16.2.2003, at about 4.00 PM. The dispute emerged between two neighbours over the throwing of garbage in front of the door of the deceased.

Chand Singh (complainant) son of Kabli Singh resident of Village Rehmatgarh, had three brothers namely Bhagwan Singh, Lal Singh (Both deceased) and Rajwinder Singh. Manjit Kaur is his wife, whereas Shamsher Sigh, Udham Singh and Sohan Singh are his sons and Sonia Kaur is his daughter.

Des Raj, who is the son of the brother of his grand father, retired from the police department. The houses of both the accused and the complainant and their families adjoin each other.

On 16.2.2003, there was a Bhog ceremony of Path at village Rehmatgarh on account of birth anniversary of Baba Ravi Dass. At the time of occurrence, Des Raj was the President of Ravi Dass Committee.

After the end of "langer", family of Chand Singh complainant and Des Raj accused returned to their houses. At about 4.00 PM, a quarrel ensued between the wife of Chand Singh namely Manjit Kaur and Jaswant Kaur wife of accused Des Raj. The bone of contention between the quarrel was that family of Des Raj had been throwing rubbish in front of the house Chand Singh. Manjit Kaur wife of Chand Singh had objected Jaswant Kaur over the throwing rubbish in front of their house. Jaswant Kaur condemned Manjit Kaur and challenged that she would do in the same way and she (Manjit Kaur) was no body to restrain her. On hearing the quarrel, the family of Chand Singh including his brothers Lal Singh, Bhagwan Singh; son Shamsher Singh; nephew Tarlok Singh came out of the house. The accused Des Raj armed with his double barrel gun also came out of the house along with his family. He challenged that if they opened their voice, then he would destroy them. While saying so, he fired shot from his gun towards Manjit Kaur, which hit on the left side of her head. Consequently, she fell down. When Shamsher Singh came at the rescue of her mother (Manjit Kaur) and made a bid to stop the flow of blood from her head by placing his hand, then the accused (Des Raj) fired another shot from his gun at Shamsher Singh which hit his right hand. Shamsher Singh raised hue and cry which attracted Bhagwan Singh and Lal Singh. Accused Des Raj again loaded his gun and fired shots towards them, hitting left side of the chest of Bhagwan Singh. He fired another shot hitting left flank of Lal Sigh, who also fell down.

Accused Harminder Singh alias Happy; Pavitar Singh; Pargat Singh; Jaswant Kaur and their two daughter-in-laws continued exhorting "daddy; do not leave any member of their family alive today". At this, Des

Raj accused, again loaded his gun and fired shot towards Chand Singh complainant, hitting on his right arm, head and some of the pellets hit Tarlok Singh and a small child Raveena. The accused Des Raj also fired shots in the air. He further uttered that "he would kill the family members of the complainant whosoever remained alive".

As a result of the incident, Manjit Kaur and Bhagwan Singh died at the spot, whereas Lal Singh died in the hospital. Des Raj accused fled away from the spot along with weapon of offence.

On receipt of the ruqa from the Civil Hospital, Malerkotla regarding the injured persons including Lal Singh, ASI/SHO Harwinder Singh along with other police officials reached Civil Hospital, Malerkotla and after seeking fitness of the injured Chand Singh to make the statement recorded his statement Ex.P48, on the basis of which FIR Ex.P48/B was recorded at the Police Station City Malerkotla, on the same day at about 8.50 PM. Special reports sent to the Illaqa Magistrate was received by him on the same day at 10.20 PM. He also moved application Ex.PJ, Ex.PK and Ex.PL to know about the fitness of Raveena, Shamsher Singh and Tarlok Singh but they were declared unfit to make the statement. Shamsher Singh and Tarlok Singh and others were declared unfit to make the statement vide endorsements Ex.PJ/1, Ex.PK/1 and Ex.PL/1. Then ASI Harwinder Singh went at the spot and prepared inquest reports Ex.PV, Ex.PX and Ex.PZ. He also lifted six empties of .12 bore from the spot which were converted into parcels. Blood soaked earth found near the dead body of Manjit Kaur and Bhagwan Singh were also lifted and were converted into parcels. All these parcels were taken into possession vide memo Ex.P73. He sent the dead bodies for postmortem examination along with applications Ex.PV/1 and Ex.PW/2. He prepared the rough site plan Ex.P74, got the place photographed and took the photographs into possession vide memo Ex.PCC.

On 17.2.2003, Constable Manjit Singh handed over a parcel containing clothes of Manjit Kaur, Bhagwan Singh and Lal Singh deceased which were taken into possession vide memo Ex.P75. Constable Manjit

Singh also took into possession two parcels containing pellets vide memo Ex.PAA. On 17.2.2003, Tarlok Singh and Shamsher Singh were declared fit to make the statements. Shamsher Singh handed over his clothes which were taken into possession vide memo Ex.P55. Chand Singh also produced his blood stained clothes which were taken into police possession vide memo Ex.P49.

On 25.2.2003, ASI Harwinder Singh arrested the accused Des Raj and recovered a double barrel .12 bore gun along with two live cartridges. From his further search, 8 more live cartridges were recovered and the same were taken into possession by him vide memo Ex.PFF. He also arrested accused Jaswant Kaur on 5.5.2003. On completion of the investigation, Des Raj and Jaswant Kaur accused were challaned, whereas accused Pavitar Singh, Pargat Singh, Harminder Singh alias Happy, Baljinder Kaur and Harjit Kaur were found innocent and they were placed at column No.2 of the report. However, they were subsequently summoned by the Court to face trial vide order dated 7.8.2003.

On their appearance in the Court, they were charged under Sections 148/302/307 read with Section 149 IPC and Section 27 of the Arms Act, to which they pleaded not guilty and claimed trial.

During trial, the prosecution in order to bring home the charge against the accused examined Dr. Shital Jain (PW1), Chand Singh (PW2), Shamsher Singh (PW3), HC Gurmej Singh (PW4), HC Bikkar Singh (PW5), Amrik Singh (PW6), Surinder Nath Sharma (PW7), HC Jagtar Singh (PW8), Constable Harbhajan Singh (PW9), ASI Baljit Singh (PW10), Dr. N.C. Garg (PW11), Avtar Singh (PW12), Khushi Mohd. (PW13) and ASI Harwinder Singh (PW14). After examining the aforesaid witnesses, the prosecution closed its evidence.

When examined under Section 313 of Cr.P.C. all the incriminating circumstances appearing against them were put to them, to which they pleaded as incorrect. Accused Pavitar Singh, Harminder Singh alias Happy, Pargat Singh, Baljinder Kaur and Harjit Kaur pleaded that they were found innocent during the enquiry.

In their defence, the accused examined Constable Ram Singh (DW1), Tarlochan Singh (DW2), Gajjan Singh (DW3), Raj Verma (DW4), HC Avtar Singh (DW5) and Mohd.Salim (DW6).

Constable Ram Singh (DW1) produced the enquiry file. Tarlochan Singh (DW2) stated that on 16.2.2003, there was birth anniversary of Baba Ravi Dass. Harminder Singh and his wife Baljinder Kaur came to the Gurdwara at about 2.00 PM. He also saw them at 8.00 PM there. Gajjan Singh (DW3) stated that Baljinder Kaur and her husband Harminder Singh came to the village Gurdwara on 16.2.2003 at about 2.00 PM and he also saw them at 8.00 PM when Drama was played in the village. Raj Verma (DW4) has stated that he did not take any photographs on 16.2.2003. HC Avtar Singh (DW5) has stated that case diary dated 29.3.2003 bears the signatures of DSP Rajbachan Singh. Mohd. Salim (DW6) has stated that he is the Secretary of Muslim Football Club, Malerkotla. A football tournament was held at Sangrur from 13.2.2003 to 16.2.2003. Accused Pargat Singh is a player of football and is associated with the club. Accused Pargat Singh came with him on 16.2.2003 to watch a match being played at Sangrur and he stayed there till the prize distribution i.e. up to 6.45 PM.

On scrutiny of the entire evidence, the trial Court while acquitting accused Pavitar Singh, Harminder Singh alias Happy, Pargat Singh, Baljinder Kaur, Harjit Kaur and Jaswant Kaur, convicted accused Des Raj under Section 302 IPC and sentenced him to death for causing murder of Manjit Kaur, Bhagwan Singh and Lal Singh. However, no separate sentence for causing fire arm injuries to Shamsher Singh, Chand Singh, Tarlok Singh and Raveena has been passed though he was also held guilty under Section 307 IPC. The gun of the accused was ordered to be confiscated to the State.

Aggrieved by the aforesaid judgment, the State of Punjab made a murder reference for confirmation of death sentence awarded to the accused Des Raj. At the same time, Chand Singh revisionist preferred a Criminal Revision No.1835 of 2006 for upsetting the order of acquittal

passed qua accused Pavitar Singh, Harminder Singh alias Happy, Pargat Singh, Baljinder Kaur, Harjit Kaur and Jaswant Kaur. Similarly, the accused Des Raj has also preferred an appeal against his conviction and sentence awarded by the trial Court.

While assailing the impugned judgment of conviction, learned counsel for the appellant has urged that the case is based on the testimony of the interested witnesses namely Chand Singh (PW2) and Shamsher Singh (PW3). Their testimony looses the credibility in view of their status as such that there is delay in lodging the FIR. Again it has been urged that the accused Des Raj did not commit the crime. Actually when Chand Singh, Manjit Kaur and brother of Chand Singh and his sons came to their house, they felt irritated over the filth lying in front of their house and they suspected that it has been thrown by Jaswant Kaur. They entered the house of the accused along with 5-6 other relatives and started abusing Jaswant Kaur. Some of the persons of the complainant party armed with dangs and gandasas entered the house of the accused and dragged Jaswant Kaur by catching her hair and beat her in the street. On hearing the hue and cry, the people who had come from the function came at her rescue and grappled with those persons. Then some people in order to save the life of Jaswant Kaur fired two shots to scare the complainant party. Des Raj accused in order to have redress his grievance went to the police station but the police did not record his complaint but registered the case against the accused. Learned counsel for the appellant further urged that the motive is also missing in this case. Consequently they prayed for extending benefit of doubt to the accused Des Raj.

Having given our thoughtful consideration to the aforesaid contentions, as regards delay in lodging the FIR, on close scrutiny of the record, it transpires that the same is shorn of any such delay suggesting explanation by the prosecution. The occurrence took place on 16.2.2003 at 4.00 PM in which two persons died at the spot; one died in the hospital and four other persons suffered gun shot injuries. The injured were admitted in the hospital, then doctor sent ruqa in response to which ASI

Harwinder Singh (PW14) reached the hospital and after obtaining the fitness of the injured Chand Singh from the doctor to make statement, vide endorsement Ex.PH/1, recorded his statement which was completed at 7.30 PM, on the basis of which FIR Ex.P48/B was recorded at 7.40 PM vide DDR No.27 dated 16.2.2003. The FIR reached the Illaqa Magistrate Malerkotla at 10.20 PM. All this goes to show that the statement of Chand Singh Ex.P48 was recorded within three hours of the occurrence on the basis of which FIR was recorded without any delay and it reached the Illaqa Magistrate within three hours. After taking into consideration the time consumed by the police in completing the formalities and the time taken by the doctor in sending the ruqa after taking care of the injured it could be said that no time was lost in lodging the FIR. The deceased were none else but the persons from the brotherhood of the complainant. There was no reason to substitute the accused in place of the real culprits. The injured witnesses Chand Singh (PW2) and Shamsher Singh (PW3) have fully supported the case as set up in the first information report. Under these circumstances, it would be held to be established that the FIR was shorn of any such delay as to suggest any false implication or concoction of the prosecution version.

As regards the motive, both the witnesses namely Chand Singh (PW2) and Shamsher Singh (PW3) have clearly depicted that since Manjit Kaur (deceased) felt irritated over the throwing of the rubbish in front of their house, altercated with Jaswant Kaur (since acquitted). The utterances made by the accused refer to such altercations between them since earlier also, therefore, though the motive for committing such mutiny may not be sufficient but aggravation given by the intoxicant must have given sufficient provocation to the accused and he wanted to vanish this quarrel forever. From the suggestion made to Chand Singh (PW2) and Shamsher Singh (PW3) that they assaulted Jaswant Kaur on throwing rubbish in front of their house also supports the motive on the part of Des Raj accused to commit the crime and it also cannot be said that the case lacks motive. However, the proof of motive is never indispensable.

Where there is a clear proof of motive for the crime that lends additional support to the findings of the Court that the accused was guilty but the absence of clear proof of motive does not necessarily lead to the contrary conclusion. If the prosecution leads sufficient evidence to prove the commission of the crime, then even absence of motive does not help the case of the accused so as to extend them benefit of doubt. At the same time, it is also well settled by now that the motive always locks up in the mind of the accused and some time it is difficult to unlock. People do not act wholly without motive. The failure to discover the motive of an offence does not signify its non-existence. The Apex Court has gone to the extent that the prosecution is not bound to prove the motive. A reference, if any, can be made to the judgment delivered by the Apex Court in case ***State of Haryana vs. Sher Singh and others, AIR 1981 Supreme Court 1021*** wherein their Lordships observed as under :-

> "The prosecution is not bound to prove motive of any offence in a criminal case, inasmuch as motive is known only to the perpetrator of the crime and may not be known to others. If the motive is proved by prosecution, the Court has to consider it and see whether it is adequate. In the instant case the motive proved was apparently inadequate, although it might be possible."

As such, failure to discover motive of an offence does not signify its non existence. The failure to prove motive is not fatal as a matter of law. It may also be observed that men do not act wholly without motive but sometimes grave offences are committed on trivial matter. In the instant case, not only from the evidence led by the prosecution but from the defence set up by the accused, the motive is writ large that altercation had occurred on account of throwing of the rubbish by the family of the accused party and the accused Des Raj who was under the influence of liquor having fed-up with the on going feud thought it a correct solution to remove the source of quarrel. Thus, motive in this case cannot be said to have not been proved by the prosecution when the

occurrence was spoken to by eye-witness and the same was supported by medical report, it was not necessary to investigate the motive behind such commission of the offence. In other words, where a murderous assault has been established by clear ocular evidence, motive pales into insignificance. The aforesaid observations were made in case ***Baitullah and another vs. State of U.P., AIR 1997 (SC) 3946.***

In the instant case the occurrence took place in the broad day light. Manjit Kaur, Bhagwan Singh, Lal Singh (all the three deceased), Shamsher Singh, Tarlok Singh, Raveena and Chand Singh (all the four injured) suffered injuries. Out of these two injured witnesses namely Chand Singh (PW2) and Shamsher Singh (PW3) have deposed consistently to prove their injuries and that the injuries were caused to them and deceased at the hands of Des Raj accused. The testimony of the injured eye witnesses is supported by medical evidence, therefore, in these circumstances motive pales into insignificance.

As regards the plea of self-defence, it needs to be observed that none from the neighbourhood has been examined in order to establish that the complainant party was the aggressor rather it has come to the surface that Manjit Kaur (deceased) and Jaswant Kaur accused quarrelled with each other on account of throwing of the rubbish, then Des Raj accused opened fire under the influence of liquor which hit Manjit Kaur. On hearing it, the complainant and his family including Bhagwan Singh, Lal Singh, Tarlok Singh came out of the house. Des Raj and his family including three sons namely Pargat Singh, Pavitar Singh and Harminder Singh alias Happy and daughter-in-law Baljinider Kaur and Harjit Kaur also came out of the house. When Shamsher Singh came at the rescue of Manjit Kaur, then Des Raj again fired a shot which hit his right hand. When Shamsher Singh raised hue and cry, Bhagwan Singh and Lal Singh brothers of Chand Singh also came forward. Des Raj again loaded his gun and fired a shot which hit left side of the chest of Bhagwan Singh who fell on the ground. Des Raj again fired a shot which hit Lal Singh in his left flank. Des Raj again loaded his gun and fired a shot towards Chand

Singh hitting him on his right arm and head. Some of the pellets hit Tarlok Singh and a child Raveena. Though the witnesses namely Tarlochan Singh (DW2) and Gajjan Singh (DW3) stated that Harminder Singh alias Happy and his wife Baljinder Kaur were present in the Gurdwara; and Mohd. Salim (DW6) stated that accused Pargat Singh was present with him in connection with match at Sangrur, yet none of the persons who had returned from the Gurdwara after celebrations of birth anniversary of Baba Ravi Dass has supported the defence plea set up by the accused. Even otherwise, the complainant party was unarmed, therefore, the plea that the fires were shot at the deceased and the injured persons to protect the life and property of Jaswant Kaur also cannot be believed.

Now coming to the other contention that the relative witnesses are always interested witnesses and cannot be placed reliance to uphold the conviction of the accused, also has no legs to stand. Here in this case, the witnesses are not only related one but they are injured witnesses. They had no previous enmity against the accused to book them in the case while leaving the real culprits. The injured witnesses have their own relevance and credibility in the criminal jurisprudence. These witnesses when are subjected to lengthy cross examination, withstand the test of credibility, reliability, trustworthiness then their testimony certainly cannot be discarded merely on the ground of their status as such. Their testimonies also stand corroborated by the medical evidence. A reference, if any, to support our this view, can be made to the judgment delivered by the Apex Court in case ***State of U.P. vs. Kishan Chand 2005(1) RCR (Criminal) 276,*** wherein their Lordships observed as under :-

> "10. The submission of the counsel for the accused that the testimony of P.Ws. cannot be acted upon, as they are the interested witnesses is to be noted only to be rejected. By now, it is well settled principle of law that animosity is a double edged sword. It cuts both sides. It could be a ground for false implication and it could also be a ground for assault.

> Just because the witnesses are related to the deceased would be no ground to discard their testimony, if otherwise their testimony inspires confidence. In the given facts of the present case they are but natural witnesses. We have no reason to disbelieve their testimony. Similarly, being the relatives, it would be their endeavour to see that the real culprits are punished and normally they would not implicate wrong persons to the crime, so as to allow the real culprits to escape unpunished.
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> 11. That apart PW1-Shridhar and PW8-Mizazi Lal are both independent and injured witnesses. The testimony of an injured witness has its own relevance and efficacy. The fact that the witnesses, sustained injuries at the time and place of occurrence lends, support to their testimony that the witnesses were present during the occurrence. The injured witnesses were subjected to lengthy cross-examination but nothing could be elicited to discredit their testimony."

In the instant case also, the witnesses have withstood the test of cross-examination. They besides being injured could not be condemned by the learned counsel for the appellant on any point, therefore, their testimonies cannot be discarded merely on the ground that they are relatives of the deceased. Consequently, finding no infirmity in the judgment of conviction we would deem it appropriate to uphold the same.

Now coming to the other appeal made by the State against the acquittal of accused-respondents Jaswant Kaur, ,Pavitar Singh, Harminder Singh @ Happy, Pargat Singh @ Rajinder Singh, Baljinder Kaur and Harjit Kaur, we observe that no infirmity in disturbing the same has come to light. It is not disputed that before Des Raj opened the attack, he did not attract any instigation or provocation from any of the other accused. He fired four shots hitting, Manjit Kaur, Shamsher Singh, Bhagwan Singh, Lal Singh just after coming out of the house and without any exhortation from any accused. Accused Pavitar Singh, Pargat Singh, Harminder

Singh, Baljinder Kaur, Harjit Kaur and Jaswant Kaur, being the members of the same family, in all human probabilities could be present at the scene of occurrence. No common design or object can be imputed to them merely for their presence at the house. Only lalkaras have been attributed to Pargat Singh, Harminder Singh alias Happy, Pavitar Singh, Jaswant Kaur, Baljinder Kaur and Harjit Kaur, just during the occurrence when he was repeating the shots without any obstruction or resistance. Jaswant Kaur also cannot be imputed with any common object as she never knew that this trivial matter would take turn of horrendous incident. Thus, their exhortation after four shots were fired does not lead this Court to form an opinion against the accused that Des Raj committed the crime in furtherance of the common intention or common object of the accused.

Now coming to the murder reference. The question for determination before us is whether the death sentence awarded against Des Raj commensurates to the offence committed.

Mr. R.S. Ghai, learned senior counsel for the appellant has submitted that the findings given by the trial Court while awarding death sentence requires to be set aside because the Court considered only one side of the picture and did not appreciate the reasons which drove the appellant to this distorted act. He has taken us through the trial Court judgment wherein the trial Court observed that there was no previous enmity between the accused and the deceased and the occurrence took place on a trivial matter when the wife of the accused quarrelled with Manjit Kaur wife of Chand Singh complainant. The accused was under the influence of liquor and he was holding a licensed gun. Des Raj accused is not the stranger to the complainant and the deceased. He is the son of the brother of the grand father of Chand Singh complainant. They were living in the same vicinity. There was no element of pre-meditation and pre-concert between Des Raj and his co-accused for committing this gruesome murder of three persons and causing injuries to four others. The occurrence took place only after they had returned from Gurdwara where they had gone in connection with the celebration of birth anniversary of

Baba Ravi Dass.

On the other hand, Mr. M.S. Sidhu, Senior Deputy Advocate General, Punjab while throwing light over the poison boiling in the mind of the accused and his repeated acts of loading and reloading the gun and going amuck to play havoc with the lives of the people irrespective of their number and sex, has urged that the death penalty awarded in this case will serve penological purpose.

It has been further urged that notwithstanding the fact that despite the strong opposition of death penalty by abolitionists and protagonists of the human rights, still death penalty could not be erased from the statue book. In this regard a reference of Para No.132 of the judgment delivered in case ***Bachan Singh vs. State of Punjab, 1980 (2) SCC 684*** wherein it was observed as under :-

> "132. To sum up, the question whether or not death penalty serves any penological purpose is a difficult, complex and intractable issue. It has evoked strong, divergent views. For the purpose of testing the constitutionality of the impugned provision as to death penalty in Section 302, Penal Code on the ground of reasonableness in the light of Articles 19 and 21 of the Constitution, it is not necessary for us to express any categorical opinion, one way or the other, as to which of these two antithetical views, held by the Abolitionists and Retentionists, is correct. It is sufficient to say that the very fact that persons of reason, learning and light are rationally and deeply divided in their opinion on this issue, is a ground among others, for rejecting the petitioners' argument that retention of death penalty in the impugned provision, is totally devoid of reason and purpose. If, notwithstanding the view of the Abolitionists to the contrary, a very large segment of people, the world over, including sociologists, legislators, jurists, judges and administrators still firmly believe in the worth and necessity of capital punishment for the protection of

society, if in the perspective of prevailing crime conditions in India, contemporary public opinion channelised through the people's representatives in Parliament, has repeatedly in the lst three decades, rejected all attempts, including the one made recently, to abolish or specifically restrict the area of death penalty, if death penalty is still a recognized legal sanction for murder or some types of murder in most of the civilized countries in the world, if the framers of the Indian Constitution were fully aware – as we shall presently show they were – of the existence of death penalty as punishment for murder, under the Indian Penal Code, if the 35th Report and subsequent reports of the Law Commission suggesting retention of death penalty, and recommending revision of the Criminal Procedure Code and the insertion of the new Sections 235(2) and 354(3) in that Code providing for pre-sentence hearing and sentencing procedure on conviction for murder and other capital offences were before Parliament and presumably considered by it when in 1972-73 it took up revision of the Code of 1898 and replaced it by the Code of Criminal Procedure, 1973, it is not possible to hold that the provision of death penalty as an alternative punishment for murder, in Section 302, Penal Code is unreasonable and not in the public interest. We would, therefore, conclude that the impugned provision in Section 302, violates neither the letter or the ethos of Article 19."

Thus, eventually, Mr. M.S. Sidhu, Senior Deputy Advocate General, Punjab while arguing that the balance between the aggravating and mitigating circumstances in the present case would certainly tilt the scales of justice in favour of confirmation of the capital punishment awarded against the accused prayed for maintaining the said penalty awarded against the accused by the trial Court.

Having deliberated over the issue, it needs to be noticed that

the circumstances of the case require to be delineated with a view to determine the adequacy of sentence awarded to the accused. The accused and the family of the deceased reside in the same street. They belong to Scheduled Castes community. The accused being the patrol man hailed from the disciplined class. He being a cop knew fully well about the opportune time to use the licensed weapon. Hot blood was running in the veins of two families over throwing of rubbish by Jaswant Kaur wife of the accused in front of the house of Manjit Kaur despite their opposition. Former used to claim her authority obviously being the wife of a cop. She had challenged Manjit Kaur that process will continue in any event. The accused who was under the influence of liquor with a view to end the feud for ever and to impress his authority over the family of the deceased, opened fire, taking lives of three and causing injuries to four others. Out of these deceased and injured, Bhagwan Singh and Lal Singh are the brothers; Shamsher Singh is the son; Tarlok Singh is he nephew; Manjit Kaur is the wife of Chand Singh injured-complainant and Miss Raveena a child from the street. The accused fired six shots in all and he reloaded the gun every time. Even after killing three persons and causing injuries to four others, he had no sense of remorse but showed his anger and fled away with the weapon of offence.

It has been rightly observed by the Hon'ble Mr. Justice Krishna Iyer, J in case ***Ediga Anamma vs. State of Andhra Pradesh, 1974 (4) S.C.C. 443,*** that "guilt once established, the punitive dilemma begins. The choice between death penalty and life term has to be made in a situation which is not altogether satisfactory. It is picked when the impact of the crime is enormous viewed from the angle of the number of causalities inflicted by the offender." It is also equally settled that capital punishment has not been completely evaporated from the statute book. However, capital punishment ought to be imposed only in very rare and exceptional cases of grave murder and for this scrupulous care of human concern should never the approach of the Court.

It has also been observed by the Apex Court in case

Gyasuddin Khan @ Md. Gyasuddin Khan vs. State of Bihar, AIR 2004 (SC) 210, that the nature of the crime, the circumstances of the criminal and the impact of the crime on the community are broadly the considerations that ought to be kept in view by a Court called upon to choose between the death sentence and the life imprisonment. At the same time, the circumstances in which the death sentence can be imposed cannot be placed in pigeon holes. The enumeration of aggravating and mitigating circumstances in the case of ***Bachan Singh vs. State of Punjab, 1980 (2) SCC 684*** is not exhaustive and is not intended to fetter the judicial discretion. This Court guardedly said that they are broad indicators or guidelines and that it did not propose to formulate rigid standards vis-a-vis sentencing process. Each one of the enumerated factors cannot be viewed in isolation. A holistic view has to be taken on the facts presented in each case. In this context, we may quote the pertinent observations made by Sarkaria J. speaking for the Constitution Bench in Bachan Singh's case :

> "As we read Section 354(3) and 235(2) and other related provisions of the Code of 1973, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of "special reasons" in that context, the Court must pay due regard both to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. More often than not, these two aspects are so interwined that, it is difficult to give a separate treatment to each of them. This is so because 'style is the man'. In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate watertight compartments. In a sense, to kill is to be cruel and therefore all murders are cruel. But such cruelty may vary in its degree

of culpability. And it is only when the culpability assumes the proportion of extreme depravity that "special reasons" can legitimately be said to exist."

It was then pointed out that :

"No exhaustive enumeration of aggravating circumstances is possible. But this much can be said that in order to qualify for inclusion in the category of "aggravating circumstances" which may form the basis of "special reasons" in Section 354 (3), circumstances found on the facts of a particular case, must evidence aggravation of an abnormal or special degree."

A variety of sentences has been provided under the Indian Penal Code, obviously to meet the standards of seriousness of the crime. The sentencing policy has been adopted by the jurists in order to promote respect for law, to provide just punishment for the offence to afford adequate deterrent to criminal conduct and to protect the community from further similar conduct. Had there not been any fear of punishment against the law offenders, then there would have been rule of anarchy. Sentencing serves a threefold purpose: (i) punitive; (ii) deterrent; and (iii) protective. The Court must not only look to the crime and the victim but also the circumstances of the criminal and the impact of the crime on the society. Before awarding capital punishment, the Courts should keep in mind whether the crime is so brutal, diabolical and revolting as to shock the collective conscience of the community where criminal is menace to the society and ordinary imprisonment would altogether be inadequate and does not commensurate to the gravity of the offence.

Even in case ***Bachan Singh vs. State of Punjab, AIR 1980 (SC) 898***, the Apex Court observed that balance between the protagonists of the deterrent punishment on one hand and the humanists crying against death penalty on the other hand, by holding that death sentence should be imposed in 'rarest of the rare cases' and laid down following parameters/guidelines to be kept in view by the Court while deciding the quantum of punishment.

(i) The extreme penalty of death need not be inflicted except in gravest cases f extreme culpability.

(ii) Before opting for the death penalty the circumstances of the "offender" also require to be taken into consideration along with the circumstances of the "crime".

(iii) Life imprisonment is the rule and death sentence is an exception. Death sentence must be imposed only when the life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and mitigating circumstances before the option is exercised.

In rarest of rare cases when collective conscience of the community is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded.

In a very recent judgment of the Apex Court rendered in ***Saibanna vs. State of Karnataka, 2005 (3) RCC 7,*** while following ***Bachan Singh's case (supra)*** and another case rendered by three Judges Bench in ***Machhi Singh and others vs. State of Punjab, 1983 (3) SCC 470*** their Lordships observed as under :-

Para 10: "A reading of Bachan Singh (supra) and Machhi Singh (supra) indicates that it would be possible to take the

view that the community may entertain such sentiment in the following illustrative circumstances :

(1)When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community.

(2)When the murder is committed for a motive which evinces total depravity and meanness; e.g., murder by hired assassin for money or reward or a cold-blooded murder for gains for a person vis-a-vis whom the murderer is in dominating position or in a position of trust, or murder is committed in the course of betrayal of the motherland.

(3)When murder of a member of a Scheduled Caste or minority community etc. is committed not for personal reason but in circumstances which arouse social wrath, or in cases of "bridge burning" or "dowry deaths" or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

(4)When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

(5)When the victim of murder is an innocent child, or a helpless woman or an old or infirm person or a person vis-a-vis whom the murderer is in a dominating position or a public figure generally loved and respected by the community."

In another judgment rendered in case ***Karan Singh and another vs. State of U.P., 2006 (1) R.C.C. 20,*** the Hon'ble Apex Court refused to commute the death sentence into life imprisonment of two appellants in a case where they had killed as many as five persons over a property dispute observing as under :-

> "We are unable to accept the contentions advanced by the appellants' counsel. The appellants killed as many as five persons one by one and the nature of the injuries sustained by the deceased persons show that almost all of them were butchered with axes and other weapons in a very dastardly manner. The appellants after killing three of them even went to the house of the deceased and killed the children who were in no way involved with the property dispute with the appellants. It seems that the appellants wanted to exterminate the whole family. On reappraisal of the entire facts and circumstances of the case, we are not inclined to commute the death sentences imposed on the appellants Karan Singh and Kanwar Bahadur Singh."

In ***Surja Ram vs. State of Rajasthan, 1996 (3) RCR (Crl.) 658*** there was a land dispute between brothers and the accused killed his brother, his two minor sons, aunt and also attempted to kill his brother's wife and daughter an the intention was to wipe out the entire family and it was held that the offence committed in a cool and calculated manner and is rarest of rare cases and the death sentence was affirmed.

In ***Davanidhi Bisoi vs. State of Orissa, 2003 Criminal Law Journal, 3697*** the case was based on circumstantial evidence and the accused killed the entire family of the deceased, who is related to him including three year's child in the night when they were asleep and there was no provocation from the victims and the purpose was only to gain financial benefit and though the accused was aged only 35 years having aged parents and small daughter, it was held that there is no justification for imposing of life imprisonment.

In ***Ranjeet Singh and another vs. State of Rajasthan, 1988 (2) RCC (SC) 87,*** the entire family including children when were asleep were murdered cold blooded and it was held that the death sentence was appropriately awarded to the accused.

In ***Mahesh etc. vs. State of Madhya Pradesh, AIR 1987***

Supreme Court, 1346 the accused murdered a person, his wife, mother and daughter and his neighbour and the Hon'ble Supreme Court held that it will be a mockery of justice to permit the accused to escape the extreme penalty of law, faced with such evidence and such cruel acts to give the lessor punishment for the accused would be to render the justicing system of the country. The common man will lose faith in Courts and the death sentence was confirmed.

Guided by the aforesaid judicial precedents and the parameters as set out in ***Bachan Singh's*** and ***Machhi Singh's*** cases (supra), now we proceed to reproduce the aggravating circumstances which are apparent on the face of the record of this case.

(i) The accused in order to impress his authority on his neighbours opened fire, killing three persons and injuring four others including men, woman and a child.

(ii) The accused tried to wipe out majority of the family members.

(iii) He being unmindful of the gravity of the offence nor of the crime, and wanted to satisfy the ego infested in him.

(iv) The deceased and the injured were none else but the members of his own brotherhood.

(v) Pre-meditated act of the accused, whatever the consequences, is writ large by the fact that he brought the gun and cartridges from inside the house being unprovoked instigated or abetted from any side, continued loading and reloading the gun in order to silent the voice ever raised by the neighbours over their legal acts.

(vi) He while going amuck created havoc and killed whosoever came in front of him.

(vii) He had no sense of remorse and ran away along with the weapon of offence after this massive carnage.

(viii) The only fault of the hapless and helpless members of this Scheduled Caste community (deceased) was that they

used to object to the atrocities committed by the wife of the accused by way of throwing rubbish in front of the house of the family of the complainant. The accused also did not bother if minor girl Raveena (aged six years) was to be affected by his attack and he did not shirk injuring her also.

(ix)These gruesome holocaust has been committed in cold blooded manner and this could not be expected from a disciplined patrol man who could be presumed to come at the protection of the life and liberty of the people then to attack unscrupulously at the unarmed and innocent men, woman and child. He was not in a position that he could not control himself from doing this gruesome act. The murders committed in dastardly manner unerringly shows that the act was diabolic of the superlative degree and not only shocks the judicial conscience of the Court but the collective conscience of the society also stands trembled.

As against the aforesaid aggravating circumstances, Mr. R.S. Ghai, learned counsel for the appellant vociferously laid emphasis over the following circumstances to implore compassion for the accused :-

(i) The accused is not a hard core criminal. He had no past bad antecedents.

(ii)The offence may be heinous but it is the result of human mind going astray because of the day to day quarrel between his wife and members of his own brotherhood.

(iii)The accused was not acting of his own but he was influenced by the liquor which he had consumed. He has also refered to the evidence where the complainant and the witnesses admitted that on the day of occurrence the accused had taken the liquor.

(iv)There was no serious dispute or previous enmity between the complainant party and the accused and they had just returned after celebrating birth ceremony of Baba Ravi

Dass.

(v) It was neither an organized crime nor was committed because of the lust of wealth or women for money or such as extortion dacoity or robbery; not even for the lust of sex; not an act of antisocial element, kidnapping and trafficking of minor girls. The occurrence took place suddenly on account of the routine quarrel of the women over the throwing of the rubbish in the street.

(vi) There are all chances that he may be reformed or rehabilitated during the period of his exile and due to continuous reformation courses in the jail.

While balancing the aforesaid aggravating and mitigating circumstances on the parameters as laid down in the catena of judgments as referred to above and having gone through the evidence and the judgment passed by the learned Sessions Judge, Sangrur, we do not hesitate to endorse the view taken by the trial Court that the case in hand falls in the category of "rarest of the rare cases". The evidence on record speaks to the volumes that the accused being from the police force had lot of ego to claim dominance over the people living in the vicinity. The wife of the accused also did not lag behind to have the track of it from her husband. She in her sense of pride did not resist from throwing the rubbish in front of the house of the family of the deceased and challenged her to do whatever she could. The accused being a civilized citizen of this country instead of prevailing upon his wife to live like a civilized lady played with his gun like a firework which resulted into massive carnage.

Much stress has been laid by Mr. R.S. Ghai, learned counsel for the appellant that due to drunkenness the accused lost control of his mind and got derailed his brain and because of this extreme mental disturbance he could not know as to what he was to do, what he was not to do, therefore, the case does not fall within the purview of "rarest of the rare cases" and this act on account of intoxication should be treated as mitigating circumstance not to slap him with the capital punishment.

Having pondered over the matter, we are of the view that the plea of drunkenness is no excuse and cannot be taken as sufficient mitigating circumstance to seek clemency because intoxication was neither against his will nor it was administered to him without his knowledge. The accused also did not take this plea at the time of trial in his defence, nor he stated a word when he was heard at the time of quantum of sentence. A similar proposition arose before the Apex Court in a latest case, in ***Criminal Appeal No.1302 of 2006, Bablu @ Mubarik Hussain vs. State of Rajasthan, decided on 12.12.2006,*** wherein their Lordships observed as under :-

> "Section 85 IPC deals with act of a person incapable of judgment by reason of intoxication caused against his will. As the heading of the provisions itself shows, intoxication must have been against his will and/or the thing which he intoxicated was administered to him without his knowledge. There is no specific plea taken in the present case about intoxicant having administered without appellant's knowledge. The expression "without his knowledge" simply means an ignorance of the fact that what is being administered to him is or contains or is mixed with an intoxicant.
>
> The defence of drunkenness can be availed of only when intoxication produces such a condition as the accused loses the requisite intention for the offence. The onus of proof about reason of intoxication due to which the accused had become incapable of having particular knowledge in forming the particular intention is on the accused. Basically, three propositions as regards the scope and ambit of Section 85 IPC are as follows :-
>
> (i) The insanity whether produced by drunkenness or otherwise is a defence to the crime charged.
>
> (ii) Evidence of drunkenness which renders the accused incapable of forming the specific intent essential to

constitute the crime should be taken into account with the other facts proved in order to determine whether or not he had this intent; and

(iii)The evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime and merely establishing that his mind is affected by drink so that the more readily give to some violent passion, does not rebut the presumption that a man intends the natural consequences of this act.

In the instant case, the plea of drunkenness can never be an excuse for the brutal, diabolic acts of the accused. The trial Court and the High Court have rightly treated the case to be one falling in rarest of rare category thereby attracting the death sentence."

Similarly, in this case also, when the accused never took defence of drunkenness, therefore, he cannot instrument the said plea as a mitigating circumstance.

No other point has been raised by the learned counsel for the appellant to assail the impugned judgment.

As an upshot of the above discussion, this horrendous act whereby the accused caused three causalities and injured four others carves out an exception in this case to bring it within the four corners of the "rarest of the rare cases" warranting no punishment less than death sentence. Consequently, we have no hesitation to answer the reference in affirmative and accordingly confirm the death sentence awarded to the accused Des Raj by the learned Sessions Judge, Sangrur. However, the death sentence will not be executed till the limitation period for leave to appeal before the Hon'ble Supreme Court expires.

With the aforesaid observations, the appeals preferred by the accused Des Raj against his conviction; and State of Punjab against

acquittal of the remaining accused persons stand dismissed.

Criminal Revision preferred by Chand Singh-complainant also stands dismissed.

(A.N. Jindal)
Judge

December 22, 2006 **(Virender Singh)**
'deepak' **Judge**